**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF RHODE ISLAND**

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| **CONSORZIO DEL PROSCIUTTO** | : | |
| **DI SAN DANIELE** | : | |
| | : | |
| **v.** | : | **C.A. No. 07-039ML** |
| | : | |
| **DANIELE, INC.** | : | |

**MOTION TO STAY AND REQUEST PURSUANT TO L.R. Cv. P. 7.2 FOR AN EXPEDITED HEARING ON THE MOTION**

Plaintiff has filed a Three-Count Complaint, Count I for Breach of Contract arising out of a Settlement Agreement dated March 25, 2005, Count II for False Designation of Origin under the Trademark Act, and Count III for Trademark Infringement. Counts II and III arise only if this Court were to find that defendant materially breached the Settlement Agreement.

Based on this Court's ruling on the plaintiff's motion for summary judgment and defendant's cross-motion that Daniele is not limited to only one trademark on its line of prosciutto products, it seems economically and judicially prudent for this Court to stay discovery on Counts II and III and expedite a hearing on Count I. If Daniele, Inc. did not materially breach the Settlement Agreement dated March 25, 2005, then Counts II and III fail.

Plaintiff's position is that the five names selected by the defendant are not valid trademarks but are descriptive terms and therefore Daniele, Inc. has not adopted any trademark and is using Daniele, Inc. as a de facto trademark in violation of the agreement. Defendant's position is that the five names are valid trademarks and are suggestive terms and not descriptive. Whether the terms are suggestive or descriptive is a factual issue to be decided by the trier of fact. While plaintiff may be seeking damages for other alleged breaches under the Settlement Agreement such as the size of the lettering on the package, any such breach or damages resulting therefrom would not trigger a claim under Counts II and III of the complaint.

Limiting discovery to Count I of the complaint and having an expedited hearing on Count I of the complaint would be the most practical and best use of judicial time, resources and would avoid unnecessary motions, depositions on matters that may be rendered moot depending on the Court's ruling on Count I of the complaint.

For the reasons stated, defendant, Daniele, Inc., is seeking a motion to stay discovery on Counts II and III of the complaint and revised pre-trial order so that Count I is heard and decided on an expedited basis after allowing for reasonable discovery pertaining to the claims and defenses arising out of Count I of the complaint.

Defendant is seeking an expedited hearing in accordance with L.R. Cv. P. 7.2. In accordance with this rule, a memorandum of law is not being filed in support of this motion. A hearing is requested on this motion to stay if the Court deems such a hearing appropriate.

Defendant's counsel has in good faith conferred or attempted to confer with plaintiff's counsel pertaining to the above motion in an effort to resolve the motion without court intervention.

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***CERTIFICATION***

The undersigned hereby certifies that this document has been filed electronically on this 9th day of January, 2008, and is available for viewing and downloading to the ECF registered counsel of record:

**Via Electronic Service/ECF:**

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***CERTIFICATION***

The undersigned hereby certifies that a true copy of the within document was forwarded on this 9th day of January, 2008, via first class mail, postage pre-paid, to the following counsel of record:

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